37.4

still be in the same position it assigned it amount due thereunder, the tenday-

"Q. That was the reason why you saw Mr. James J. Richardson before saying whether an assignment would be made? A. Yes. sir, -absolutely. John Richardson wanted to protect Jim."

From this testimony it appears that while Richardsons, the Evanses and Norah Bouldin actually owned it; that the Richardsons for purposes of the Evanses took the title to it, and executed two mortgages on it, one for the purchase money, one to secure a loan of John C. Evans; that they were able to secure the money to repay that loan, but could only secure it by borrowing it from a third person and giving him a lien on the property; that Martha Richardson, apparently interested in protecting her father, desired to have the mortgage assigned to the lender, but that her husband to protect himself wished to have it released; that the mortgagee although without personal interest in that domestic impasse voluntarily undertook to force a solution which would protect the husband Richardson at the expense of his wife and her father by insisting upon a release, and although tendered through her attorney and agent the money due with a request that she upon those facts, she was entitled after that refusal to proceed with the foreclosure.

[1-4] The general rule in this state is that a mortgagee cannot be required to assign a mortgage, Shirk v. Cornell, 136 Md. 397, 111 A. 217, Dircks v. Logsdon, 59 Md. 173, but that he is bound to accept such amount as may be due under it including principal, found as a matter of fact that there had been interest, and expenses, when properly ten- an unconditional legal tender, but it may dered, Parsons v. Urie. 104 Md. 248, 64 A. be admitted that upon the facts it is difficult 927, S L. R. A. (N. S.) 559, 10 Ann. Cas. 278, to distinguish Kent Building & Loan Ass's Kent Building & Loan Ass'n v. Middleton, 112 v. Middleton from this case. The evidence Md. 17, 75 A. 967, without annexing any con- there was that counsel for the mortgagore dition whatever to such acceptance, Ibid, and wrote the mortgagee for a statement of the where the person making the payment has mortgage, saying at the same time, "I will an interest in the equity of redemption, or pay same off . ," and that later be as a lien creditor, and the payment inures inclosed a check for the amount in a letter to the benefit of others jointly liable with in which he said: "Herewith enclosed I hand him under the mortgage, he is ordinarily you check for \$177.05 of the mortgage of J. subrogated to the rights of the mortgagee K. Middleton due the Kent Building and Louis against such persons, Ibid, Jones on Mort- Company. Please assign the mortgage to gages, §§ 1086, 792. But while the mortga- me. I pay it at the request of Mr. Durding gee has no right to impose any conditions up- and Mr. Middleton. Mr. Durding writes me on an acceptance of a legal tender of the today he expects to take it up. He does but

and that I didn't think that that would be be legal if the mortgagor annexes to it the fair to John Richardson, as he was the only condition that the mortgagee assign the mortperson who had showed the slightest inter- gage, for, as said in Shirk v. Cornell, 136 est in me or my money, and I did not think Md. 397, 111 A. 217, 219; "The appellant it fair to leave him in the lurch. I also seems to assume that he had the also dure told him that I was going to see Jim Richard- right to require the mortgagees to assign the son and ask him if he wanted me to assign mortgage to Mr. Tippett, upon payment or the mortgage to some one else, and that tender of the amount, costs, etc.; but such is not the law in this state, in the absence of an agreement. The case of Direks v. Logsdon, 59 Md. 173, referred to by the arpellant, does not sustain his position. In that case the controversy was as to whether what the mortgagee had done amounted to a release, but there was no intimation in the opinion that Logsdon had any right to dethe legal title to the property was in the mand an assignment from Wilson, the mortgagee, although he did voluntarily assign the mortgage. Nor is there anything in Parsons v. Uric. 104 Md. 238, 64 A. 927, 8 L. R. A. (N. S.) 559, 10 Ann. Cas. 278, Kept Building & Loan Ass'n v. Middleton, 112 Md. 10, 75 A. 967. or Wingert v. Brewer, 116 Md. 518, \$2 A 157. holding that the owner of the equity of redemption, merely as such, can require the mortgagee to assign the mortgage. There may be circumstances where a court of equity will not regard a payment by one entitled to redeem as an extinguishment of the mortgage, as illustrated in the above cases: but. although it may be unreasonable and seem harsh to refuse to assign a mortgage to the holder of the equity or to a third party upder some conditions, ordinarily a morigage is not required to assign a mortgage, although the one asking it may be entitled to redeem it." So that the inquiry finally is whether the tender made on behalf of Mrs. assign the mortgage to Mrs. Richardson, re-Richardson was unconditional. If it was, fused the tender. The question is whether the mortgagee was bound to accept it, and was not authorized thereafter to proceed with the foreclosure, Parsons v. Urie, supra. Kent Building & Loan Ass'n v. Middleton. supra; if it was not, then the mortgagee was acting within her legal rights in going on with the foreclosure.

In both of the cases last cited, the court

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